

**INSURANCE DIVISION[191]****Notice of Intended Action****Proposing rule making related to multiple employer welfare arrangements and providing an opportunity for public comment**

The Insurance Division hereby proposes to rescind Chapter 77, “Multiple Employer Welfare Arrangements,” Iowa Administrative Code, and to adopt a new Chapter 77 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 505.8 and 507A.4 and 2018 Iowa Acts, Senate File 2349.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 507A.4 as amended by 2018 Iowa Acts, Senate File 2349.

*Purpose and Summary*

Proposed new Chapter 77, which will supersede current Chapter 77 relating to multiple employer welfare arrangements, serves two purposes. The first purpose of the new chapter is to comply with 2018 Iowa Acts, Senate File 2349, section 2, which requires the Insurance Commissioner to adopt rules to implement its provisions. Senate File 2349 provides, among other things, that an entity that wants to act in Iowa as a multiple employer welfare arrangement (MEWA) must, in addition to meeting the other requirements of Iowa Code chapter 507A, meet certain “membership stability” requirements set forth by the Insurance Commissioner by rule. New Chapter 77 included in this Notice is intended to set forth such membership requirements for entities wishing to establish a self-funded MEWA, by ascertaining that there is a firm foundation for the stability of the underlying organization. Such stability is critical to ensure consumer protection.

The second purpose intended by proposed new Chapter 77 is to implement the observations related to current Chapter 77 made during the Insurance Division’s five-year review of all of the Division’s administrative rules (under agency identification number 191 in the Iowa Administrative Code). That five-year review was conducted pursuant to Iowa Code section 17A.7(2) and was completed in July 2017. Pursuant to those observations, this new version of Chapter 77 reflects edits to existing rules for purposes of clarification, updating, and consistency with other Iowa Code and Iowa Administrative Code provisions.

A document that shows the changes made to existing Chapter 77 for both of the purposes outlined above can be found on the Insurance Division website at [iid.iowa.gov](http://iid.iowa.gov).

The rules of current Chapter 77 are renumbered in new Chapter 77 as follows:

Rule number in current Chapter 77:	Rule number in new Chapter 77:
	191—77.1(507A)
	191—77.2(507A)
191—77.1(507A)	191—77.3(507A)
191—77.2(507A)	191—77.4(507A)
Subrule 77.2(4)	Subrule 77.6(5)
Subrules 77.3(1) and 77.3(2)	191—77.5(507A)
Subrule 77.3(3)	191—77.6(507A)
	191—77.7(507A)

191—77.4(507A)	191—77.8(507A)
191—77.5(507A)	191—77.9(507A)
191—77.6(507A)	191—77.10(507A)
191—77.7(507A)	191—77.11(507A)
191—77.8(507A)	191—77.12(507A)
191—77.9(507A)	191—77.13(507A,507B)
191—77.10(507A)	191—77.14(507A)
191—77.11(507A)	191—77.15(507A)

The changes made to the current version of Chapter 77 for the purpose of implementing 2018 Iowa Acts, Senate File 2349, section 2, are as follows:

- New rules 191—77.1(507A) and 191—77.2(507A) are added to set forth the chapter’s purpose and the chapter’s definitions.
- A sentence is added to the end of current rule 191—77.1(507A) (new rule 191—77.3(507A)).
- Current rule 191—77.2(507A) (new rule 191—77.4(507A)) is modified as follows: The catchwords are modified; new wording is added in paragraphs 77.4(1)“c” and “d”; outdated language in existing subparagraph 77.2(1)“g”(2) has been omitted; the requirement that a MEWA must have been organized and maintained for ten years has been deleted, and new language is added to subparagraph 77.4(1)“g”(3) relating to organization requirements; additional requirements are added in subparagraph 77.4(1)“g”(5); and a new paragraph 77.4(1)“k,” which requires the submission of biographical affidavits for the members of the MEWA board of directors to be filed as part of the MEWA application process for obtaining a certificate of registration, is added.
- Filing requirements in new rule 191—77.6(507A) are updated, and a new quarterly report requirement is added as subrule 77.6(4).
- New membership requirements for self-insured MEWAs are added as new rule 191—77.7(507A).
- Current rule 191—77.4(507A) (new rule 191—77.8(507A)) is modified as follows: The time deadline for contract compliance has been removed; a new sentence is added to the required notice to purchasers in subrule 77.8(1); modifications are made to new subrule 77.8(2), guaranteed issue; and a new subrule 77.8(5), compliance with state mandates, is added to require compliance mainly with Iowa Code chapter 514C, but also with any other state mandates.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. Unless unanticipated numbers of MEWA entities apply for certificates of registration, the staff of the Insurance Division should be able to handle the work required to administer these rules.

#### *Waivers*

The Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 10:30 a.m. on August 8, 2018. Comments should be directed to:

Ann Outka  
Insurance Division  
Two Ruan Center  
601 Locust Street, Fourth Floor  
Des Moines, Iowa 50309  
Fax: 515.281.3059  
Email: [ann.outka@iid.iowa.gov](mailto:ann.outka@iid.iowa.gov)

### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 8, 2018	Insurance Division Offices
10:30 a.m. to 12 noon	Two Ruan Center
	601 Locust Street, Fourth Floor
	Des Moines, Iowa

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 191—Chapter 77 and adopt the following **new** chapter in lieu thereof:

### CHAPTER 77 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

**191—77.1(507A) Purpose.** This chapter is intended to establish rules for the establishment and registration of multiple employer welfare arrangements that intend to offer an employer welfare benefit plan to, and maintain the plan for, any resident of this state.

### **191—77.2(507A) Definitions.**

“*Beneficiary*” means as it is defined in 29 U.S.C. Section 1002(8).

“*Commissioner*” means the Iowa insurance commissioner or, as delegated by the commissioner, the insurance division.

“*Employee*” means as it is defined in 29 U.S.C. Section 1002(6).

“*Employee welfare benefit plan*” means as it is defined in 29 U.S.C. Section 1002(1).

“*Employer*” means as it is defined in 29 U.S.C. Section 1002(5).

“*Enrollee*” means an individual covered under the MEWA.

“*Health coverage*” means a policy or certificate that provides coverage for medical, dental, optical, surgical, hospital, accident and sickness, prescription, or disability benefits or life insurance.

“*Member*” means an employer participating in the MEWA.

“*MEWA*” means a multiple employer welfare arrangement as defined in 29 U.S.C. Section 1002(40).

*“Participant”* means an enrollee or other beneficiary covered under the MEWA.

*“Person”* means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization, or as “person” is defined in 29 U.S.C. Section 1002(9).

**191—77.3(507A) Certificate of registration.** A person shall not establish or maintain a self-insured employee welfare benefit plan that is a MEWA in this state unless the MEWA obtains and maintains a certificate of registration pursuant to this rule. Such certificate of registration is required for all MEWAs that elect to offer employer welfare benefit plans to residents of this state.

**191—77.4(507A) Application for certificate of registration for self-insured MEWAs.**

**77.4(1)** A person wishing to obtain a certificate of registration as a MEWA pursuant to this chapter shall submit an application and a plan of operation to the commissioner. This application and plan of operation shall include the following:

*a.* A business plan, including a copy of all health coverage contracts or other instruments which the MEWA proposes to make with or sell to its employer members or its association’s or group’s members, a copy of its health coverage description and the printed matter to be used in the solicitation of employer members or its association’s or group’s members to purchase the health coverage.

*b.* Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA.

*c.* A current list of all members of the employer group or association sponsoring the MEWA, a description of the relationship among the employers, a description of how the relationship serves as the basis for the formation of the association or employer group, and a description of how the employer group or association complies with subrules 77.7(1) and 77.7(2), if applicable.

*d.* A description of the activities of the association or group of employers on behalf of its employer members or its association’s or group’s members other than the sponsorship of the MEWA, to further demonstrate compliance with subrule 77.7(1), if applicable.

*e.* Current financial statements of the MEWA that shall include, at a minimum, balance sheets, an income statement, a cash flow statement and a detailed listing of assets.

*f.* An actuarial opinion which is prepared, signed, and dated by a person who is a member of the American Academy of Actuaries and which states that appropriate loss and loss adjustment reserves have been established, that adequate premiums are being charged, and that the association is operating in accordance with sound actuarial principles and in conformance with this rule.

*g.* A statement from an authorized representative of the applicant that certifies all of the following:

(1) The MEWA shall be administered by an authorized insurer or by an authorized third-party administrator.

(2) The MEWA is established by a trade, industry, or professional association of employers that has a constitution or bylaws, is organized and maintained in good faith, and meets all membership requirements set forth in rule 191—77.7(507A).

(3) The association or group of employers sponsoring the MEWA is engaged in substantial activity for its members other than sponsorship of an employer welfare benefit plan.

(4) The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

(5) No insurance producers or benefits consultants established, sponsored, administer, or serve as a trustee or on the governing body of the MEWA.

*h.* A certificate from the applicant’s legal representative that, to the best of the legal representative’s knowledge and belief, the MEWA is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

*i.* A description of and evidence of a mechanism, approved by the commissioner, to ensure that claims shall be paid in the event an employer member of the MEWA is unable to comply with the MEWA’s contribution requirements.

*j.* A copy of the most recent Form M-1 filed by the MEWA with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

*k.* Biographical affidavits from all members of the board of directors of the MEWA. The affidavits shall be prepared using the current template for biographical affidavits prescribed by the National Association of Insurance Commissioners. This requirement shall not apply to any MEWA registered with the state prior to January 1, 2018.

*l.* Any additional information requested by the commissioner.

**77.4(2)** The commissioner shall examine the application, the plan of operation, and any supporting documents submitted by the applicant. The commissioner may conduct any investigation that the commissioner may deem necessary and may examine under oath any persons interested in or connected with the MEWA.

**77.4(3)** Within a reasonable time, either the commissioner shall issue to the MEWA a certificate of registration upon finding that the applicant MEWA has met all requirements or the commissioner shall deny the application for a certificate of registration and provide notice to the applicant MEWA setting forth reasons for finding that the applicant MEWA does not meet all the requirements. An unsuccessful applicant may file a new application for a certificate of registration at any time.

**191—77.5(507A) Financial requirements.**

**77.5(1) *Surplus.***

*a.* Unless otherwise provided below or pursuant to the discretion of the commissioner, each MEWA shall deposit with an organization or trustee meeting the requirements of rule 191—32.4(508) cash, securities or any combination of these that is acceptable to the commissioner in the amount set forth below. In addition to the requirements set forth below, the commissioner may increase the amount required to be deposited based on the commissioner's written determination that such an increase is necessary to adequately secure any potential liability of the MEWA to its employer members and enrollees, subject to Iowa Code chapter 17A proceedings.

*b.* The surplus requirement for a MEWA shall be the greater of:

- (1) \$500,000; or
- (2) An amount equal to 10 percent of the written premium as of the previous December 31.

**77.5(2) *Reserves and stop-loss coverage.***

*a.* A MEWA shall have at all times aggregate excess stop-loss coverage providing the MEWA with coverage with an attachment point which is not greater than 120 percent of actuarially projected losses on a calendar-year basis.

*b.* A MEWA shall establish and maintain specific stop-loss coverage providing the MEWA with coverage with an attachment point which is not greater than 5 percent of annual expected claims for purposes of this subrule and shall provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subrule as determined by sound actuarial principles.

*c.* A MEWA shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles.

*d.* Premiums shall be set to fund at least 100 percent of the MEWA's actuarially projected losses plus all other costs of the MEWA.

*e.* All coverage obtained pursuant to paragraphs 77.5(2) "*a*" and "*b*" shall contain a provision allowing for at least 90 days' notice to the commissioner upon cancellation or nonrenewal of the contract.

*f.* No contract or policy of per-occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under this subrule, unless such contract or policy is issued by a company that is:

- (1) Licensed to transact business in this state; or
- (2) Authorized to do business in Iowa as an accredited or certified reinsurer.

**191—77.6(507A) Filing requirements.** A MEWA shall file the following reports with the commissioner:

**77.6(1) *Annual report.*** A MEWA shall annually, on or before the first day of March, file a report which has been verified by at least two of its principal officers and which covers the preceding calendar year. The report shall be on the form designated by the commissioner. The report shall be completed using statutory accounting practices and shall include information required by the commissioner. The commissioner may request additional reports and information from a MEWA as deemed necessary.

**77.6(2) *Independent actuarial report.*** A MEWA shall annually, on or before the first day of March, file an independent actuarial opinion prepared in conformance with this rule. The commissioner may conduct an independent actuarial review of a MEWA in addition to the actuarial opinion required by this rule. The cost of any actuarial review shall be paid by the MEWA.

**77.6(3) *Certificate of compliance.*** A MEWA shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the appropriate officer representing the MEWA and shall certify all of the following:

*a.* That the plan meets the requirements of this rule and the applicable provisions of Iowa statutes and regulations.

*b.* That an independent actuarial opinion that attests to the adequacy of reserves, rates, and the financial condition of the plan has been attached to the certificate of compliance. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and other financial condition of the plan, a test of the prior year's claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American Academy of Actuaries.

*c.* That a written complaint procedure has been implemented. The certificate of compliance shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints in the prior calendar year.

*d.* That the MEWA has contracted with an insurer authorized to do business in this state or with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

**77.6(4) *Quarterly updates.*** A self-insured MEWA formed after January 1, 2018, shall provide during the first year after the commissioner issues the MEWA's certificate of registration a quarterly update comparing projections to actual experience.

**77.6(5) *Modifications to plan of operations.*** A MEWA shall file any modifications to the MEWA's plan of operation, including but not limited to amendments to articles of incorporation and bylaws.

#### **191—77.7(507A) Membership requirements for self-insured MEWAs.**

**77.7(1)** Any employer group or association that intends to form a MEWA shall have been established for a good-faith purpose other than for the purpose of providing insurance or a health plan.

**77.7(2)** The employer group or association that wishes to form a MEWA shall have been in existence for a period of five years at the time it seeks a certificate of registration as a MEWA.

**77.7(3)** The employer group or association sponsoring the MEWA shall collect annual dues from its employer members.

**77.7(4)** Each employer member that participates in an employer welfare benefit plan offered by the MEWA shall meet the definition of "employer" as set forth in Iowa Code chapter 513B.

**77.7(5)** Any employer member that participates in an employer welfare benefit plan offered by a MEWA shall be a member of the employer group or association sponsoring the MEWA.

**77.7(6)** Any employer member that participates in an employer welfare benefit plan offered by a MEWA shall be required to participate in the MEWA for a period of not less than five calendar years. Any contract issued by a MEWA to an employer shall contain reasonable enforcement provisions, including but not limited to reasonable fees or assessments for early departure and for enrollment in another MEWA during the early-departure period.

**77.7(7)** The activities of the MEWA, including the establishment and maintenance of the employer welfare benefit plan, shall be controlled by the MEWA's employer members, either directly or

indirectly through the regular nomination and election of directors, trustees, officers, or other similar representatives to control on the employer members' behalf.

**77.7(8)** The membership requirements set forth in subrules 77.7(1) through 77.7(7) are not applicable to MEWAs that received a certificate of registration from the commissioner prior to January 1, 2018.

**191—77.8(507A) Policy or contract.** All contracts issued by a MEWA shall comply with the following:

**77.8(1) Notice to purchasers.** Every MEWA application for coverage under the health plan and every policy and certificate issued by a MEWA shall contain in ten-point type on the front page the following notice prominently displayed:

**NOTICE**

**This policy is issued by a multiple employer welfare association (MEWA).**

**MEWAs are not subject to all of the insurance laws and regulations of your state.**

**State insurance insolvency guaranty funds are not available for your MEWA.**

**Please review the policy closely to understand the covered benefits.**

**77.8(2) Guaranteed issue.** MEWAs shall offer on a guaranteed-issue basis health coverage to all individuals who qualify as enrollees of the employer welfare benefit plan offered by an employer member participating in the MEWA.

**77.8(3) Types of benefits that can be offered.** MEWAs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability benefits. A MEWA that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

**77.8(4) Compliance with HIPAA.** All contracts or policies issued by a MEWA shall conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

**77.8(5) Compliance with state mandates.** The employer welfare benefit plan offered by a MEWA shall comply with all applicable state mandates, including Iowa Code chapter 514C.

**191—77.9(507A) Disclosure.** The following disclosure shall be made to each employer member of the MEWA:

**The benefits and coverages described herein are provided through a self-insured trust fund established and funded in full or in part by a group of employers. It is not a licensed insurance company and it is not protected by a guaranty fund in the event of insolvency.**

**191—77.10(507A) Filing fee.** A filing fee of \$100 shall accompany each application for a certificate of registration as a MEWA.

**191—77.11(507A) Agreements and management contracts.** Any agreement between the MEWA and any administrator, service company, or other entity shall be made available for review in the office of the commissioner upon request by the commissioner.

**191—77.12(507A) Examination.**

**77.12(1)** Each MEWA shall be subject to examination by the commissioner in accordance with Iowa Code chapter 507, as a “company,” and as if the MEWA is an “insurer,” under the definitions of that chapter. Iowa Code chapter 507 shall govern all aspects of the examination.

**77.12(2)** The commissioner may make an examination of a MEWA as often as the commissioner considers it necessary, but not less frequently than once every five years. The expenses of the examination shall be assessed against the MEWA being examined in a manner in which expenses of examinations are assessed against a company under Iowa Code chapter 507.

**191—77.13(507A,507B) Trade practices.** A MEWA is subject to applicable provisions of the unfair trade practices Act, Iowa Code chapter 507B, as if the MEWA is a “person” as defined in Iowa Code section 507B.2(1).

**191—77.14(507A) Insolvency.** The provisions of Iowa Code chapter 507C shall apply to MEWAs which shall be considered insurers for purposes of that chapter. However, a MEWA shall not be subject to Iowa Code chapter 508C.

**191—77.15(507A) Suspension or revocation of certificate of registration.** The commissioner may sanction a MEWA or suspend or revoke any certificate of registration issued to a MEWA upon any of the following grounds:

**77.15(1)** Failure to comply with any provision of these rules or any applicable provision of the Iowa Code.

**77.15(2)** Failure to comply with any lawful order of the commissioner.

**77.15(3)** Failure to promptly pay lawful benefit claims.

**77.15(4)** Committing an unfair or deceptive act or practice.

**77.15(5)** Deterioration of financial condition adversely affecting the MEWA’s ability to pay claims.

**77.15(6)** A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions.

**77.15(7)** A finding that the MEWA or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to an employer member, a participant, or a person otherwise entitled thereto and that have been entrusted to the MEWA or its administrator in its fiduciary capacity.

These rules are intended to implement Iowa Code section 507A.4 as amended by 2018 Iowa Acts, Senate File 2349, section 2.